

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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KHARI DEVON COLEY,

Petitioner,

v.

9:23-CV-0612  
(GLS/TWD)

SUPERINTENDENT,

Respondent.

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APPEARANCES:

OF COUNSEL:

KHARI DEVON COLEY  
Petitioner, pro se  
13-A-0904  
Great Meadow Correctional Facility  
Box 51  
Comstock, NY 12821

GARY L. SHARPE  
United States Senior District Judge

**DECISION and ORDER**

Petitioner Khari Coley seeks federal habeas relief pursuant to 28 U.S.C. § 2254. Dkt. No. 1.<sup>1</sup> Instead of a petition, the commencing document that petitioner filed is a form motion — seemingly intended for submission to the United States Court of Appeals for the Second Circuit — seeking permission to file a second or successive federal habeas petition. *Id.* at 1.

Petitioner has previously filed two federal habeas petitions in this Court. *See Coley v. Miller*, No. 9:22-CV-0458 (DNH/TWD) ("*Coley I*"), Dkt. No. 1, Petition; *Coley v. Superintendent*, No. 9:16-CV-0992 (GTS) ("*Coley I*"), Dkt. No. 1, Petition. The petition in *Coley II* was dismissed as successive, and petitioner unsuccessfully sought permission to file

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<sup>1</sup> Citations to the various submissions, Court Orders, and Mandates refer to the pagination generated by CM/ECF, the Court's electronic filing system.

the petition from the Second Circuit. *Coley II*, Dkt. No. 6, Decision and Order (dismissing petition and directing petitioner to seek permission from the Second Circuit); *Coley II*, Dkt. No. 7, Judgment; *Coley II*, Dkt. No. 9, Notice of Appeal; *Coley II*, Dkt. No. 11, Mandate (denying motion to file a successive petition).

The Antiterrorism and Effective Death Penalty Act (AEDPA) restricted the ability of petitioners to file second or successive petitions. See *Torres v. Senkowski*, 316 F.3d 147, 150 (2d Cir. 2003). In such circumstances, AEDPA requires individuals seeking to file a second or successive petition to obtain leave of the appropriate Court of Appeals for an order authorizing the district court to consider the second or successive application. See 28 U.S.C. § 2244(b)(1)-(3); see also Rule 9 of the Rules Governing Section 2254 Cases in the United States District Courts ("Before presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2244(b)(3) and (4)."); N.D.N.Y. L.R. 72.4(c) ("Before a second or successive application is filed in this Court, the applicant shall move in the Second Circuit Court of Appeals for an order authorizing the district court to consider the application."). The Second Circuit has directed "that when a second or successive petition for habeas corpus relief . . . is filed in a district court without the authorization by th[e Second Circuit] that is mandated by § 2244(b)(3), the district court should transfer the petition or motion to th[e Second Circuit] in the interest of justice pursuant to § 1631." *Liriano v. United States*, 95 F.3d 119, 123 (2d Cir. 1996).

Here, it seems clear that, while petitioner sent his motion to this Court, his intention was to file it with the Second Circuit. Further, as petitioner is seeking permission to file a

successive petition, this Court has no jurisdiction to grant the relief petitioner seeks.

Consistent with the direction given to him by the Court in *Coley II*, petitioner appears to be seeking permission so that he can correctly file a successive federal habeas petition.

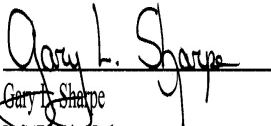
Accordingly, the Clerk is directed to transfer the motion to the Second Circuit for its consideration.

**WHEREFORE**, it is hereby

**ORDERED** that the motion, Dkt. No. 1, is **TRANSFERRED** to the United States Court of Appeals for the Second Circuit for a determination under 28 U.S.C. § 2244(b) as to whether petitioner should be authorized to file a second or successive habeas petition in the district court; and it is further

**ORDERED** that the Clerk serve a copy of this Order on petitioner in accordance with the Local Rules of Practice.

May 26, 2023  
Albany, New York

  
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Gary L. Sharpe  
U.S. District Judge